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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,646	10/17/2003	George P. Teitelbaum	VLINK.002DV1	1234

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EXAMINER

DAVIS, DANIEL J

ART UNIT PAPER NUMBER

3731

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/688,646	Applicant(s) TEITELBAUM, GEORGE P.	
	Examiner D. Jacob Davis	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on December 30, 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9, 10 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9, 10 and 36-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 36 and 37 are rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 4,892,550 to Huebsch. Huebsch discloses in Fig. 1 a “connection rod” comprising a self sealing valve 41, a distal end having a tip 26, a compliant, and an inflatable balloon 23 filled with epoxy (column 8, lines 50-67), a hardenable, rapid setting liquid.

Claim 9 is rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,549,679 to Kuslich. Kuslich discloses in Figs. 50-51 a “connection rod” comprising a self-sealing valve (Fig. 52), a “tip” located on the opposite side of the valve, and a hardenable material 52 (column 9, lines 41-60).

***Claim Rejections - 35 USC § 103***

The following is a quotation of the appropriate paragraph of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 10 is rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,549,679 to Kuslich in view of U.S. Patent No. 6,127,597 to Beyar et al. Kuslich is silent with respect to metallic reinforcing wires. Nevertheless, in Figs. 14-17, Beyar et al. teaches a cement filled woven balloon having stainless steel reinforcing wires to "reinforce the structure of the balloon" (column 31, lines 6-29 and 52-60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include reinforcing wires with the Kuslich device in order to "reinforce the structure of the balloon."

Claims 9 and 36-38 are rejected under 35 USC 103(c) as being unpatentable over U.S. Patent No. 6,425,923 to Stalcup et al. in view of U.S. Patent No. 4,892,550 to Huebsch. In Fig. 4, Stalcup discloses a "connection rod" comprising a distal tip, and a compliant inflatable tube filled with polymethylmethacrylate (column 3, lines 4-11).

Stalcup discloses that the inflatable member is attached to a hose 26. The patent fails to disclose a self-sealing valve. Nevertheless, Huebsch teaches the use of a self-sealing valve 41 enabling the hole to close automatically and prevent the inserted material from egressing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a self-sealing valve to the Stalcup device enabling the hose to be removably attached to the implant and to prevent the inserted material from egressing.

Claim 39 is rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 4,892,550 to Huebsch. Huebsch discloses a tip 26, but is silent regarding the material of the tip. The tip is a fastener, and it is well known to make fasteners metallic. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the fastener metallic.

Claim 40 are rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,549,679 to Kuslich. The balloon comprises a braided balloon. Kuslich further discloses a different embodiment wherein the balloon is made of a porous polymer material (column 7, lines 9-20 and 33-44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the braided structure out of a polymer material since polymers are strong, biocompatible, and inexpensive.

***Response to Arguments***

Applicant's arguments filed December 30, 2004 have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Jacob Davis whose telephone number is (571) 272-4693. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJD

  
GLENN K. DAWSON  
PRIMARY EXAMINER